

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 NATHAN OKPOTI,

5 Plaintiff,

6 v.

7 LAS VEGAS METROPOLITAN POLICE  
8 DEPARTMENT, *et al.*,

9 Defendants.

Case No. 2:15-cv-00110-APG-CWH

**ORDER (1) GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS; (2) GRANTING MOTION  
FOR RULE 56(D) CONTINUANCE;  
AND (3) DENYING MOTION TO  
AMEND**

(DKT. #32, #38, #39)

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11 Plaintiff Nathan Okpoti filed this lawsuit against defendants Las Vegas Metropolitan  
12 Police Department ("LVMPD"), Officer John Brandon, and the City of Las Vegas. Okpoti  
13 alleges that he suffered a stroke while driving and that Officer Brandon pulled him over and then  
14 arrested him on suspicion of driving under the influence. He asserts claims under 42 U.S.C.  
15 § 1983 for unreasonable seizure and failure to adequately train or supervise. He also brings a  
16 state law claim for false arrest/imprisonment.

17 Defendants LVMPD and Officer Brandon move to dismiss the § 1983 claim against  
18 Officer Brandon in his official capacity as duplicative of the claim against LVMPD.  
19 Additionally, LVMPD moves to dismiss the false arrest/imprisonment claim because Okpoti did  
20 not timely notify LVMPD of his claim as required by Nevada law. Okpoti responds that the  
21 statutory time period for notice should be extended because he was suffering cognitive  
22 impairments from his stroke. He moves for leave to amend to add allegations in this regard if  
23 necessary. He also moves for a continuance under Federal Rule of Civil Procedure 56(d) to  
24 conduct discovery on the severity of his medical condition and whether that supports a different  
25 accrual date.

26 I grant the motion to dismiss in part. I dismiss the § 1983 claim against Officer Brandon  
27 in his official capacity as redundant of the claim against LVMPD. Officer Brandon remains a  
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1 defendant in his individual capacity. I deny without prejudice the motion to dismiss the false  
2 arrest/imprisonment claim because I grant Okpoti's request to conduct additional discovery on  
3 whether his mental condition would support a later accrual date. I deny Okpoti's motion to  
4 amend as moot.

### 5 **I. BACKGROUND**

6 Okpoti alleges that on January 24, 2013, he suffered a stroke while driving his car. (Dkt.  
7 #28 at 2.) Officer Brandon stopped Okpoti for suspicion of driving under the influence. (*Id.*)  
8 Okpoti denied drinking, and he told Officer Brandon that his head hurt and his legs were weak.  
9 (*Id.* at 3.) Officer Brandon observed Okpoti's eyes were watery and glassy, his speech was  
10 incoherent, he was confused about where he was and what date it was, and he failed the field  
11 sobriety tests. (*Id.*) Officer Brandon arrested Okpoti and transported him to the City of Las Vegas  
12 Detention Center ("LVDC"). (*Id.* at 4.)

13 Once at LVDC, Okpoti was unable to answer questions coherently or dress himself in  
14 LVDC's orange jumpsuit. (*Id.*) Okpoti contends that he was placed in a cell with another inmate  
15 who complained that Okpoti was making noises as if something was wrong but the City of Las  
16 Vegas did not investigate. (*Id.*) Okpoti alleges that he was held at LVDC from January 24 to  
17 January 29, 2013. (*Id.*)

18 Okpoti further alleges that after he was released, he contacted friends and family to get  
19 them to bring him food. (*Id.*) He contends that a friend brought him food and observed that the  
20 left side of Okpoti's body was slack and that Okpoti was confused and incoherent. (*Id.* at 5.) The  
21 friend then contacted Okpoti's mother, who believed Okpoti was suffering from stroke  
22 symptoms. (*Id.* at 5.) According to Okpoti, his mother took him to a hospital, where the  
23 admitting personnel were "shocked that no one during Plaintiff's experience with Defendant  
24 LVMPD noticed Plaintiff's serious medical condition." (*Id.*)

25 Okpoti asserts three claims based on these allegations. First, he alleges a claim under 42  
26 U.S.C. § 1983 based on the allegation that the defendants unlawfully arrested Okpoti without  
27 probable cause and failed to provide him with a medical screening. (*Id.* at 5-6.) Second, he  
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1 alleges a § 1983 claim against LVMPD and the City of Las Vegas for failure to adequately train  
2 or supervise their employees to recognize individuals in need of medical attention. (*Id.* at 7-8.)  
3 Finally, he alleges a state law claim for false arrest/imprisonment. (*Id.* at 9.)

4 LVMPD and Officer Brandon move to dismiss the § 1983 claim against Officer Brandon  
5 in his official capacity because it is duplicative of the claim against LVMPD. They also move to  
6 dismiss the state law false arrest/imprisonment claim against LVMPD because Okpoti did not  
7 notify LVMPD of his claim within two years of this claim accruing, as required under Nevada  
8 Revised Statutes § 41.036(2). LVMPD argues that the first notice it received was when Okpoti  
9 served the original complaint on January 30, 2015, more than two years after the incident in  
10 question.

11 Okpoti responds that even if he did not timely notify LVMPD, only the third claim against  
12 LVMPD should be dismissed, and his § 1983 claims, as well as his state law false arrest claim  
13 against Officer Brandon, should not be dismissed. Okpoti also argues that he complied with the  
14 statute by filing his original complaint within two years, even if he did not serve it on LVMPD  
15 until more than two years had passed. Okpoti contends that because his claim would not be  
16 barred if brought against any other defendant, it would violate equal protection to require him to  
17 serve LVMPD within two years even if he timely filed his complaint within two years.  
18 Alternatively, Okpoti argues that under the discovery rule, his claim accrued later than January  
19 30, 2013 because he was suffering from a medical condition which affected his cognitive abilities  
20 so he could not fully appreciate his injuries until he was medically treated. Okpoti requests leave  
21 to amend and moves under Rule 56(d) for a continuance to conduct discovery on his medical  
22 condition. As for the official capacity claims against Officer Brandon, Okpoti argues that Officer  
23 Brandon is a necessary party to the action and should remain in both his official and personal  
24 capacities.

## 25 **II. ANALYSIS**

26 In considering a motion to dismiss, “all well-pleaded allegations of material fact are taken  
27 as true and construed in a light most favorable to the non-moving party.” *Wyler Summit P’ship v.*  
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1 *Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). However, I do not necessarily  
2 assume the truth of legal conclusions merely because they are cast in the form of factual  
3 allegations in the plaintiff's complaint. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-  
4 55 (9th Cir. 1994). A plaintiff must make sufficient factual allegations to establish a plausible  
5 entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Such allegations  
6 must amount to "more than labels and conclusions, [or] a formulaic recitation of the elements of a  
7 cause of action." *Id.* at 555.

8 Although styled as a motion to dismiss, the defendants attached an affidavit to their  
9 motion to support their contention that January 30, 2015 was the first notice they received of  
10 Okpoti's claim. (Dkt. #32 at 10-11.) I therefore treat the motion as one for summary judgment.  
11 Fed. R. Civ. P. 12(d).

12 Summary judgment is appropriate if the pleadings, discovery responses, and affidavits  
13 demonstrate "there is no genuine dispute as to any material fact and the movant is entitled to  
14 judgment as a matter of law." Fed. R. Civ. P. 56(a), (c). A fact is material if it "might affect the  
15 outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
16 (1986). An issue is genuine if "the evidence is such that a reasonable jury could return a verdict  
17 for the nonmoving party." *Id.*

18 The party seeking summary judgment bears the initial burden of informing the court of the  
19 basis for its motion and identifying those portions of the record that demonstrate the absence of a  
20 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden  
21 then shifts to the nonmoving party to set forth specific facts demonstrating there is a genuine  
22 issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir.  
23 2000). I view the evidence and reasonable inferences in the light most favorable to the non-  
24 moving party. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir. 2008).

25 Under Rule 56(d), if a nonmovant shows that it cannot present facts essential to justify its  
26 opposition, I may: (1) deny the motion or defer considering it; (2) allow time to obtain affidavits  
27 or declarations or to take discovery; or (3) issue any other appropriate order. The party seeking  
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1 the continuance “bears the burden of showing what specific facts it hopes to discover that will  
2 raise an issue of material fact.” *Harris v. Duty Free Shoppers Ltd. P’ship*, 940 F.2d 1272, 1276  
3 (9th Cir. 1991).

4 **A. Official Capacity Claims**

5 “An official capacity suit against a municipal officer is equivalent to a suit against the  
6 entity.” *Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles Cty. Sheriff Dep’t*, 533 F.3d 780, 799  
7 (9th Cir. 2008) (citing *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985)). I therefore dismiss  
8 the § 1983 claim against Officer Brandon in his official capacity as redundant of the claim against  
9 LVMPD. *Id.*

10 **B. False Arrest/Imprisonment Claim**

11 Pursuant to Nevada Revised Statutes § 41.036(2), “[e]ach person who has a claim against  
12 any political subdivision of the State arising out of a tort must file the claim within 2 years after  
13 the time the cause of action accrues with the governing body of that political subdivision.”  
14 Generally, a “cause of action accrues when the wrong occurs and a party sustains injuries for  
15 which relief could be sought.” *Petersen v. Bruen*, 792 P.2d 18, 20 (Nev. 1990). However, the  
16 Supreme Court of Nevada recognizes the “discovery rule,” under which a claim does not accrue  
17 “until the injured party discovers or reasonably should have discovered facts supporting a cause  
18 of action.” *Id.*; *Siragusa v. Brown*, 971 P.2d 801, 806-07 (Nev. 1998). When the injured party  
19 discovered or reasonably should have discovered facts supporting a claim is a question of fact. *Id.*  
20 at 806.

21 Additionally, under Nevada Revised Statutes § 11.250, if a person entitled to bring an  
22 action is “insane” at the time the cause of action accrued, “the time of such disability shall not be  
23 a part of the time limited for the commencement of the action.” In dicta, the Supreme Court of  
24 Nevada favorably cited an opinion from this court construing the term “insane” in § 11.250 “to  
25 include a mental disability resulting in the inability to manage one’s affairs.” *Butler ex rel. Biller*  
26 *v. Bayer*, 168 P.3d 1055, 1062 n.23 (Nev. 2007) (quoting *Smith By & Through Smith v. City of*  
27 *Reno*, 580 F. Supp. 591, 592 (D. Nev. 1984)).  
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1 According to Okpoti's allegations, he was arrested on January 24 and released on January  
2 29, 2013. Under the statute, he had to file a claim with LVMPD on or before January 29, 2015.  
3 Okpoti filed the original complaint on January 20, 2015 but did not serve it on LVMPD until  
4 January 30, 2015. (Dkt. #1; Dkt. #32 at 11.) Okpoti does not dispute that January 30, 2015 was  
5 the first notice he gave LVMPD of his claim.

6 Assuming for purposes of this motion that filing the complaint within two years was  
7 insufficient, I nevertheless deny the motion to dismiss. Okpoti alleges in his second amended  
8 complaint that he suffered a stroke and was experiencing cognitive disabilities. Okpoti alleges he  
9 had trouble opening the car door and was stumbling, he was incoherent and confused, he did not  
10 know what street he was on or what date it was, he was unable to answer questions coherently  
11 when he arrived at LVDC, and he could not dress himself. (Dkt. #28 at 3-4.) He further alleges  
12 that when released he had trouble finding his way home and had difficulty feeding himself. (*Id.* at  
13 4-5.)

14 Accepting these allegations as true, there is a basis to conclude that Okpoti either was  
15 mentally incapable of discovering facts supporting his cause of action or he had a mental  
16 disability rendering him incapable of managing his affairs until a date later than January 30, 2013.  
17 I therefore grant Okpoti's request to conduct discovery on when his claim accrued or whether, as  
18 defined under § 11.250, he was "insane" at the time his claim accrued such that his January 30,  
19 2015 notice was timely. Accordingly, I deny the defendants' motion to dismiss on this basis,  
20 without prejudice to renew. I deny Okpoti's motion to amend because the second amended  
21 complaint adequately alleges facts suggesting insanity or later discovery.

### 22 **III. CONCLUSION**

23 IT IS THEREFORE ORDERED that defendants Las Vegas Metropolitan Police  
24 Department and Officer John Brandon's motion to dismiss (**Dkt. #32**) is **GRANTED in part and**  
25 **DENIED in part**. I dismiss the 42 U.S.C. § 1983 claim against Officer Brandon in his official  
26 capacity as redundant. Officer Brandon remains a defendant in his individual capacity. I deny  
27 the motion in all other respects.  
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1 IT IS FURTHER ORDERED that plaintiff Nathan Okpoti's motion to amend the  
2 complaint (**Dkt. #38**) is **DENIED**.

3 IT IS FURTHER ORDERED that plaintiff Nathan Okpoti's motion under Federal Rule of  
4 Civil Procedure 56(d) (**Dkt. #39**) is **GRANTED**.

5 DATED this 30<sup>th</sup> day of March, 2016.

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8 ANDREW P. GORDON  
9 UNITED STATES DISTRICT JUDGE  
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